



FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

1250 H Street, NW Washington, DC 20005

September 4, 2002

The Honorable John Ashcroft  
Attorney General  
U.S. Department of Justice  
10<sup>th</sup> Street and Constitution Ave., N.W.  
Washington, D.C. 20530

By Hand

Re: American Management Systems, Inc. v. U.S., No. 01-586C,  
United States Court of Federal Claims

Dear Mr. Ashcroft:

I am writing to you in my capacity as Executive Director of the Federal Retirement Thrift Investment Board, and thus its chief executive and the managing fiduciary of the Thrift Savings Plan (TSP), which the Board administers.

On Tuesday, August 27, a decision denying the United States' motion to dismiss the above-referenced case for lack of subject matter jurisdiction was issued by the court from the bench. An opinion dated August 30 gives the basis for that decision. In substance, the opinion holds that monies expended by the Board to pay TSP expenses are not the property of Federal employees (i.e., before their expenditure), but are public monies. Upon this holding, the court concluded that it has jurisdiction over the case.

In the view of the Board, the opinion is profoundly wrong and will ultimately be reversed on appeal. It has a particularly pernicious effect at this time, however, as it states that monies that Congress intended to make, and did make, the property of Federal employees are not in fact their property. With the independent administration and safety of pension funds, and especially 401(k) plans, under such intense public and congressional scrutiny, this opinion will cause shock and confusion to Federal employees if not immediately and vigorously opposed by both the Board and the Administration.

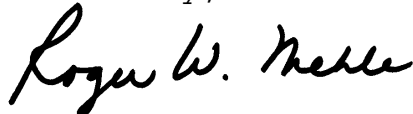
Therefore, the Department of Justice, which controls litigation before the Court of Federal Claims, should quickly take the steps necessary to effect an interlocutory appeal of this decision under 28 U.S.C. § 1292; the Department can rely on the Board's full cooperation in accomplishing this.

Furthermore, as you know, I brought suit, in my representative fiduciary capacity, against American Management Systems last

year in U.S. District Court for \$350 million in compensatory and punitive damages. The district court action concerns the same conduct of American Management Systems as that in the subject case. As the Department proceeds with the Court of Federal Claims litigation, it should do nothing therein to jeopardize the claims in the district court action (now pending appeal); the Department's close cooperation with the Board should ensure this result.

Your earliest favorable response, and continuing cooperation, will indicate that you share the Board's fiduciaries' dismay at, and their resolve to overturn, this baseless decision which threatens the retirement monies of three million Federal civilian and uniformed services TSP participants.

Sincerely,

A handwritten signature in black ink, reading "Roger W. Mehle". The signature is written in a cursive, flowing style with a large initial 'R'.

Roger W. Mehle  
Executive Director

cc: The Honorable George W. Bush (by hand)  
The Honorable Elaine Chao (by hand)